PETITION NOT PRINTED

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 187

EUGENE E. MAYNARD, *Petitioner*

v.

DURHAM & SOUTHERN RAILWAY COMPANY, *Respondent*

On Writ of Certiorari to the Supreme Court of the State of North Carolina

BRIEF FOR RESPONDENT

CHARLES B. NYE
Durham, North Carolina

CLEM B. HOLDING
Raleigh, North Carolina

Attorneys for Respondent

PARKER PRINTING CO., WASHINGTON, D. C.

SUBJECT INDEX

CITATIONS

CASES:

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 183

EUGENE E. MAYNARD, *Petitioner*

v.

DURHAM & SOUTHERN RAILWAY COMPANY, *Respondent*

On Writ of Certiorari to the Supreme Court of the State of North Carolina

---

BRIEF FOR RESPONDENT

QUESTIONS PRESENTED

1. The question for determination is whether or not the Petitioner's evidence in support of his allegations that the release was without consideration and wrongfully procured by means of fraud and duress was sufficient to warrant its submission to the jury.

2. Should the Supreme Court of the United States review a judgment of a Supreme Court of one of the

several states when the only error that could have possibly occurred in the State Supreme Court is an error in the State Supreme Court's analysis of the evidence before it?

STATEMENT

This is an action for personal injury brought by a railroad employee against his employer under and pursuant to the Federal Employers' Liability Act, wherein the Petitioner alleged that he was seriously injured on August 22, 1955 while assisting in the loading of a motor car on to the body or bed of one of Respondent's trucks. The Respondent raised as one of its defenses in the trial of the action a release signed by the Petitioner, and the Petitioner attempted to set aside the release, based on allegations that the release was obtained without consideration and by fraud, duress and undue influence.

Since Charles F. Blanchard, Esquire, counsel for Petitioner, who ostensibly prepared the Brief for the Petitioner, did not participate in the trial below or the argument before the Supreme Court of North Carolina; as will show by the record herein filed, he apparently is not familiar with the facts and details and has apparently made unintentional errors in the Petitioner's Statement of Facts; therefore, the Respondent finds it necessary to set forth the facts in detail as follows:

At the time and date of the alleged injury, the Petitioner was an apprentice section-hand foreman, and was working under the direct supervision of and was receiving instructions from Respondent's road-master and one of Respondent's section foremen.

Shortly before noon on August 22, 1955, the Petitioner was instructed to get into the bed of the said truck and to hold the handles of the motor car to keep it from rolling while three section laborers lifted the motor car into the bed of the truck (R. 36, 41, 42, 44). The Petitioner did not help lift the motor car (R. 36, 41, 42, 43, 44).

The persons present at the time of the alleged injury and when the motor car was placed on to or in the body or bed of the Respondent's truck were: Petitioner, E. E. Maynard; Petitioner's witness, J. H. Parrish; Respondent's witnesses, Freddie Williams, Walter Covington and Eugene White and H. L. Tillerson.

At the time the motor car was actually loaded into or on Respondent's truck, Petitioner Maynard was standing in the bed of the truck; the three laborers, Williams, Covington and White, picked the car up and set it in the truck, and the car was handled in a safe manner (R. 36), and the motor car did not slip or slide and did not hit Petitioner Maynard, and Petitioner Maynard made no complaint (R. 42), and the motor car was just rolled on to the truck right easy (R. 42, 43). The motor car did not lurch suddenly and could not have hit Petitioner Maynard, and Petitioner Maynard made no complaint to any person concerning being hit on August 22, 1955, the date of the alleged injury (R. 37, 42, 43, 44).

On August 23, 1955, at about 11 o'clock a.m., Petitioner Maynard talked to Respondent's roadmaster, Mr. Tillerson, and told Tillerson that he, Maynard, had hurt his back and that he MUST HAVE hurt it loading the motor car (R. 18, 44). Petitioner signed the accident report that he hurt his back lifting the

motor car into the truck (R. 50A). Maynard stated to Dr. James S. Wilson on August 25, 1955, that he had hurt his back three (3) days previously BY LIFTING A MOTOR CAR (R. 47, 48). The Petitioner never indicated in any manner that he hurt his back in the violent manner set forth in the complaint (R. 4) until the complaint was filed in 1956. The preponderance and greater weight of the evidence is that the Petitioner's testimony in respect to how he was injured and that he was injured, as alleged and testified to by the Petitioner (R. 17, 23), is untrue (R. 37, 42, 43, 44).

Respondent's roadmaster, Tillerson, met Petitioner Maynard in the Respondent's office at Apex, North Carolina, at 4 o'clock p.m. on August 23, 1955, for the purpose of making out an injury report (R. 44, 45).

An injury report was prepared on the Respondent's standard form on a typewriter by Tillerson, and Petitioner Maynard supplied each and every answer filled in on the injury report (R. 45).

PRIOR TO FILLING OUT THE ACCIDENT REPORT, THE PETITIONER HAD DISCUSSED HIS ALLEGED INJURY WITH THE CHAIRMAN OF HIS LOCAL LABOR UNION (R. 22, 33, 34). THE PETITIONER KNEW THAT HE HAD TO SIGN AN ACCIDENT REPORT WHEN HE WAS HURT ON THE RAILROAD (R. 18, 26).

The injury report (Respondent's Exhibit No. 1), with the answers supplied by Petitioner Maynard (R. 25) on August 23, 1955, and which was signed by the Petitioner, was addressed to Mr. H. A. McAllister, General Manager of the defendant railroad (R. 45, 50B).

Petitioner Maynard testified:

> "At the time I filled out that accident report, I had no idea I would ever get in a lawsuit about it." (R. 25). "I don't usually sign papers not knowing what they are." (R. 31).

Petitioner Maynard went to the tenth grade in school (R. 25), and at the time Petitioner Maynard filled out or supplied the answers for the accident report, he had no idea he would ever get into a lawsuit concerning his alleged injury (R. 25), and the Petitioner thought he just had a mild back injury and would get over it in a few weeks or a month, and when he signed the answer to the question concerning the probable disability, he meant the answer when he said "none" (R. 25).

The form was received by Mr. H. A. McAllister through the mail some three or four days after Mr. Maynard's injury and prior to the date the release was signed with Mr. McAllister on September 17, 1955 (R. 47).

For a short period of time after August 23, 1955, Petitioner Maynard was off from work (R. 25, 33), but returned to work on or about September 12, 1955, when he was referred or sent back to work by Dr. James S. Wilson (R. 48).

(The Petitioner did not stay in Duke Hospital six or seven days following his injury and prior to his executing the release, as stated in the Petitioner's Statement of Facts. There was no evidence that prior to the execution of the release the Petitioner was seriously or permanently injured, and all the evidence shows that he was improving and was apparently suffering only from a mild sprain. The Petitioner was

admitted to Duke Hospital *after May 16, 1956* (R. 27), at which time he was admitted to Duke Hospital by Dr. Owens (R. 19, 49) (sic) (Dr. Odom), to whom he was referred by Dr. Wilson after March 1956 (R. 19, 27, 49).)

A copy of the accident report made and signed by the Petitioner on August 23, 1955, was forwarded to Mr. H. A. McAllister's office, Respondent's General Manager, as aforesaid (R. 44, 45, 46), but Mr. McAllister did not see Petitioner Maynard after his alleged injury prior to September 17, 1955 (R. 45).

On Saturday, September 17, 1955, Petitioner Maynard came to Respondent's office in Durham, North Carolina, and contacted H. A. McAllister (R. 45). This was not a regular working day, and Petitioner Maynard would not have to report to Durham for his earned wages, because he received his earned wages or regular check in Apex, North Carolina (R. 45), and he signed the release at a different place from where he usually signed for his paycheck (R. 31).

When Petitioner Maynard contacted Mr. McAllister, he asked McAllister if the company would pay him for the time he was off and stated that he was ready to sign a release (R. 45); and advised McAllister that he was feeling much better and thought he was going to be all right (R. 45), which confirmed the accident report (Respondent's Exhibit No. 1). Mr. McAllister's only knowledge concerning the condition of Petitioner Maynard was the accident report and the statements made by Petitioner Maynard (R. 45, 47).

The release form, which had been prepared based on the written representations of Petitioner Maynard

in the accident report and upon his representations made unto roadmaster Tillerson, was explained in detail to Petitioner Maynard by Mr. McAllister prior to its being executed by Petitioner Maynard (R. 45). Petitioner Maynard knew that any money paid to him by Mr. McAllister was *not* for labor performed (R. 26) and that the release explained to him and shown to him and executed by him was not the kind of thing that he would sign for his regular paycheck (R. 26). The release was witnessed by two witnesses (R. 21, 50C).

Maynard testified:

> "I don't usually sign papers not knowing what they are." (R. 31).

Notwithstanding anything to the contrary in Petitioner's Statement of Facts, it is abundantly clear that the sum of $144.60 received by Petitioner as a result of his executing the release was not due the Petitioner for labor performed or for wages earned (R. 26), and the Chairman of the local union, Petitioner's witness, testified that the policy of the railroad for over forty years was that you did not get a sum of money equivalent to wages you would have earned had you worked when you were away from work unless you signed a release (R. 34, 35), *and this same Petitioner's witness discussed the alleged injury with the Petitioner prior to the Petitioner's signing the accident report and the release* (R. 22, 33).

At the time Petitioner Maynard signed and executed the said release and received the consideration therein set forth, Petitioner Maynard knew or should have known that it had been the policy and rule of the defendant railroad not to pay wages (or the equivalent of wages) to any injured employee who had been away

from work due to any alleged injury arising out of or in connection with work for the Respondent, unless the allegedly injured person signed a release upon his return to work, and that upon signing the release, the allegedly injured person was paid a sum equivalent to the salary he would have been making had he actually worked and not been out due to an alleged injury as consideration for signing the release (R. 34). The obvious and only reason for the Respondent to so pay allegedly injured employees when they return to work is to eliminate and settle any possible or contingent claim against the railroad and as a matter of compromising any alleged liability that the railroad might have arising out of the injury of any employee. Certainly, it was a "fair break" to the Respondent's employees and particularly to Petitioner Maynard (R. 34).

While Petitioner Maynard was in Mr. McAllister's office concerning the release and the monies paid to him, McAllister did not use any duress, force or any misrepresentations, or any other element of fraud concerning the release (R. 31), and McAllister, on behalf of the defendant railroad, entered into the agreement for the railroad in good faith, based on the representations made by Petitioner Maynard in the executed accident report and the statements made verbally by Petitioner Maynard to Mr. Tillerson and Mr. McAllister (R. 47). Mr. McAllister had no other knowledge as to whether or not the Petitioner was actually injured on the railroad or otherwise at the time of the execution of the release (R. 47).

At the time Mr. McAllister explained the release to Petitioner Maynard, McAllister did not know what Maynard's disability was or might be in the future, he

did not make any false representations, he did not make any fraudulent suggestions, and Maynard did not think he was going to be hurting in the future (R. 31).

> "Mr. McAllister didn't tell me anything about it; he didn't tell me a story about it. All he did was ask me how I was. On that particular day, I didn't know how long in the future, I still thought it was temporary. At that time I didn't know what it was that I was signing or I wouldn't have signed it. At that time, Mr. McAllister didn't know what my disability might be in the future from my injury. He didn't make me any false representations. The only thing he did do there, he just didn't explain the paper to me. He didn't make any deceitful suggestions to me. He didn't make any fraudulent suggestions to me. He just put the paper down there, and I signed it and got my check and left. I didn't think I was going to be hurting in the future." (R. 31).

After signing the release and receiving the consideration therefor, on the 17th day of September, 1955, *Petitioner Maynard continued to work for the Respondent until May 16, 1956, when he stopped and went to see the doctor* (R. 27). When Petitioner Maynard signed the accident report of August 23, 1955, he admitted that his probable disability would be "none" (R. 25).

When Petitioner Maynard signed the release on September 17, 1955, he had been back to work for three days and had been taking only a mixture of aspirin and codeine when necessary for pain, and this mixture did not interfere with his mental capacity (R. 48).

After May 16, 1956, Petitioner Maynard was off from work for a considerable period of time due to

the alleged injury and visited various doctors concerning same (R. 27).

On or about September 1, 1956, Maynard was advised by his doctors to return to work (R. 27, 28, 34), but rather than returning to work, he arranged for a conference with Mr. McAllister on September 7, 1956, with his attorney, Mr. Johnson (R. 27). Thereafter, on or about September 17, 1956, Petitioner Maynard advised Mr. McAllister and Mr. Tillerson that he would return to work in the near future (R. 28).

Thereafter, on or about October 12, 1956, Petitioner Maynard came to the Respondent's Durham office and contacted Mr. Holder, Vice President and General Auditor, and advised Mr. Holder that he had "fired" his lawyers, and had Mr. Holder call Mr. Nye to arrange an appointment concerning coming back to work, and Mr. Holder advised Mr. Nye, attorney for the railroad, that he, Maynard, had "fired" his lawyers (R. 28).

Thereupon, Petitioner Maynard went to Mr. Nye's office with Mr. Holder on October 12, 1956, and informed Mr. Nye that he had discharged his attorneys and wanted to return to work, and further informed Mr. Nye that he had applied for retirement and that the Board had turned him down (R. 28). Mr. Nye advised Petitioner Maynard that he could have his job back (R. 28).

Thereafter, upon Petitioner's request, a conference was arranged in Mr. Nye's office on October 23, 1956 (R. 34), so that the Petitioner could get two or three things straightened out. Present at the conference were Petitioner Maynard, B. F. Bailey, Petitioner's union representative, Mr. Nye, Mr. Tillerson, Mr.

Holder and Mr. McAllister (R. 33), and Petitioner Maynard had a great deal to say about what Tillerson had done and the way he had treated him (R. 34).

At the said conference, Petitioner Maynard got up from his seat and was mad when he was informed that he would not be paid sums equivalent to his salary for days absent from work covering the period after the first day of September, 1956, because the doctors had told him to report back to work on the first day of September, and he had failed to report back to work (R. 34).

It is obvious here that the Respondent was agreeable to paying the Petitioner an additional sum of money because he had been out of work for several months (May 16, 1956, to September 1, 1956), again due to his alleged injury, but was not willing to pay him the equivalent of wages after the first of September, when he failed to return to work after being advised to return to work on the said date by his doctors, and, of course, to get an amount of money equivalent to the wages he would have earned during the period May 16, 1956, to September 1, 1956, he would have had to sign another release, under the forty year policy of the Respondent (R. 34, 35).

Petitioner Maynard was an experienced railroad employee prior to August 22, 1955 (R. 25), and had been previously injured while working for a railroad. (R. 25).

Maynard was not abused or mistreated during the discussion and conference of October 23, 1956, and he had present at the conference the Chairman of the local union, whose job was to see that laborers with whom he was associated got a fair break (R. 34), and

the discussion between the parties was equal and no worse on one side than the other (R. 35). Nothing was said and no complaint was made at this conference on October 23, 1956, about the obtaining of the September 17, 1955 release by fraud, misrepresentation or any undue influence (R. 29, 34), and the first complaint or notice concerning fraud was set forth in the Petitioner's written Reply to the Respondent's Answer (R. 13).

Petitioner Maynard was advised on October 23, 1956, that if he came back to work, he had to come back to work in good faith, and that he would be received in good faith by the Respondent (R. 29), and under the railroad's forty-year policy, the Respondent would pay him the equivalent of wages covering his period of absence, May 16, 1956 to September 1, 1956, upon his executing another release, as customary (R. 28, 30, 33, 34, 35).

Maynard did not return to work at any time thereafter. Maynard's name was officially dropped from the rolls of the Respondent only in December, 1956 (R. 29).

SUMMARY OF ARGUMENT

The Petitioner attacked the validity of the Respondent's release on two grounds; first, that the release was unsupported by any consideration and therefore void; and, second, that its execution was procured by fraud, misrepresentation and undue influence on the part of the Respondent's agent, which attack was clearly recognized and understood by the Supreme Court of North Carolina (R. 55).

1. With respect to the question of consideration, *the Petitioner's testimony, standing alone,* shows that

the $144.60 he received for and in consideration of signing the release was not money earned and was not for labor performed (R. 26), and the $144.60 was paid to the Petitioner as an equivalent of wages for and in consideration of the Petitioner's executing the release, under a forty-year standing policy of the railroad (R. 34, 35). In addition, the Petitioner received a further consideration from the Respondent by the Respondent's providing, at its expense, the best obtainable medical care for the Petitioner over an extended period of time (R. 19, 27, 46, 49). There is no evidence in the record to support any contention of the Petitioner that he was entitled, as a matter of right, to the $144.60 as wages for the time he did not work because of his alleged injuries (R. 26, 34, 35, 57, 58).

2. Concerning the second basis upon which the Petitioner attacked the validity of the release, the evidence does not show any fraud, duress or undue influence on the part of the Respondent or its agents, but, on the contrary, the Petitioner's own testimony negatives his allegation in that respect (R. 25, 31, 58). The only true basis of the lawsuit lies in the fact that the Petitioner did not like the way Mr. Tillerson "treated him" and because he could not get the equivalent of wages for the period during which he did not work at all after September 1, 1956, at which time he was advised to return to work by his doctors (R. 34), and it is respectfully submitted that when one carefully reviews the complete record, it is evident that the Petitioner's entire alleged cause of action is a sham and completely frivolous and that neither the evidence concerning the negligence of the Respondent nor the invalidity of the release would support a jury verdict in favor of the Petitioner, even if the Judge had allowed either question to go to the jury.

QUESTION ONE

THE QUESTION FOR DETERMINATION IS WHETHER OR NOT THE PETITIONER'S EVIDENCE IN SUPPORT OF HIS ALLEGATIONS THAT THE RELEASE WAS WITHOUT CONSIDERATION AND WRONGFULLY PROCURED BY MEANS OF FRAUD AND DURESS WAS SUFFICIENT TO WARRANT ITS SUBMISSION TO THE JURY

The above question, which the Respondent feels is the only question that could possibly be before this Court, was quoted from the decision of the Supreme Court of North Carolina (R. 55). Certainly, it cannot be argued or contended that the Supreme Court of North Carolina was unaware of the problem before it and did not take due cognizance of it.

I

Considering the Petitioner's allegation that the release was not supported by consideration, the following evidence should be clearly noted:

(a) The payment made to Petitioner Maynard was made for time lost (R. 45) and represented wages he would have earned had he worked the twelve (12) days that he was away from work due to the alleged injury (R. 46).

(b) The Petitioner admitted that the money paid him was not for labor or services rendered and that the money paid him was equivalent to the money that would have been due him had he worked and performed services (R. 26). There was no evidence that the money was due the Petitioner under any contract or any understanding of any nature whatsoever except upon the consideration of executing a release (R. 30, 34, 45).

(c) The Petitioner was an experienced railroad man and had worked for the Seaboard Railroad for a period

of nine years prior to coming to work for the Respondent (R. 25).

(d) Petitioner's own witness, B. F. Bailey, testified that prior to his retirement on September 15, 1958, he had worked for the Respondent for more than forty years and that during the last years he was Chairman of the local Union and that it was part of his job to see that laborers with whom he was associated got a fair break (R. 34, 35), and that he, Bailey, knew that the policy and rules of the Respondent for the forty years were that an injured employee did not get wages when the allegedly injured employee had been out of work unless the allegedly injured employee signed a release when the allegedly injured employee returned to work (R. 35); therefore, Petitioner's own witness unquestionably established the unimpeachable fact that any payment to an allegedly injured employee who had been off from work was for and in consideration of the injured employee's signing and executing a valid and binding release with the defendant railroad, as did Petitioner Maynard on September 17, 1955.

(e) The Respondent dealt with the Petitioner in good faith at all times (R. 26, 29, 31, 34),

> "A release after injury for a good consideration, and in the absence of proof that it was not fairly entered into is binding upon the parties, and a bar to an action for damages." *Mitchell* v. *Louisville, Etc. R. Co.*, 194 Ill. App. 77 (1915). See, also, *Kusturin* v. *Chicago, Etc. R. Co.*, 287 Ill. 306, 122 NE 512 (1912); *Lindsey* v. *Acme Cement Plaster Co.*, 220 Mich. 367, 190 NW 275 (1922); *Patton* v. *Atchison, T. & S. F. R. Co.*, 59 Okla. 155, 158 P. 576 (1916); *Ballenger* v. *Southern R. Co.*, 106 SC 200, 90 SE 1019 (1916); *Panhandle, Etc. R. Co.* v. *Fitts*, 188 SW 528 (Tex. Civ. App., 1916).

If the settlement with the Petitioner in the sum of $144.60 be invalid, under the circumstances existing at the time of the settlement, one in the sum of $10,000.00 would be equally so. To hold with the Petitioner would be to preclude the possibility of any settlement between injured employees and the railroad company out of courts under its standing policy which has been in effect in excess of forty years (R. 34, 35), under which policy the railroad company has evidently paid many thousands of dollars to compromise and settle any contingent liability on its part to an injured employee when the injured employee returned to work. In the instant case, the contract of release and payment to the Petitioner could only have been a recognition of Respondent's contingent liability to the Petitioner and a satisfaction thereof, and the Federal laws do not prevent compromise or settlement of a disputed or contingent claim made fairly and in good faith. *Culver* v. *Kum*, 354 Mo. 1158, 193 SW 2d 602 (1946), 166 ALR 644. Certainly, Respondent's method of settling with allegedly injured employees who had been away from work has been considered fair for the past forty years (R. 34) and had it been otherwise, the Respondent is certain that evidence of same would have been introduced by the Petitioner.

In addition to the monetary consideration received by the Petitioner for and in consideration of the execution of the release, the Respondent promised the Petitioner that the Respondent possibly would take care of his doctor bills in the future, if he had any (R. 46). The Respondent did, in good faith, provide him with the best medical care available (R. 27) and kept his job open for him from May 16, 1956 until December 1956 (R. 29), and it cannot be argued that

the defendant railroad did other than give the Petitioner a "fair break" at all times (R. 34).

In reference to the Petitioner's written contentions herein that the $144.60 was "the exact amount due him at the time for labor" or was due for "labor performed" or for "wages", the Respondent respectfully queries as to which pay period the Petitioner would contend that the amount of money covered, weekly, bi-monthly, or monthly. The Petitioner's testimony was that he made $291.50 a month (R. 22), and it is inconceivable to Respondent that any reasonable person could, in good faith, state that the sum of $144.60 was due the Petitioner for "labor" or for "labor performed" prior to Saturday, September 17, 1955. Further, since the Petitioner brought to the attention of the Court that the release was signed on a Saturday morning, "a day which laborers normally receive their wages", it is posed as to whether or not the Petitioner now contends that he was due $144.60 for one week's labor. Again, these points only tend to show the frivolity of the Petitioner's position in his whole cause, and, in particular, the Petition filed herein.

It is submitted that the principles of law cited by the Petitioner in connection with the failure of consideration are substantially correct; however, the record of this case does not bring the facts within the principles of law stated and relied upon by the Petitioner.

II

As stated, the second basis upon which the Petitioner attacks the validity of the release was that its execution was procured by fraud, misrepresentation and undue influence. To support the allegations, the Peti-

tioner summarizes the evidence briefly, which summary the Respondent submits is erroneous.

(a) The Petitioner did not go to the General Manager's office on September 17, 1955, to get a paycheck owed him in the sum of $144.60 for *labor* or *wages* due. To the contrary, the Petitioner himself admits that he was not working during the period for which the $144.60 was paid (R. 26), and this fact is substantiated by the testimony of Dr. James S. Wilson (R. 48) and Mr. McAllister (R. 46). The only reason the Petitioner received the sum of $144.60 was for and in consideration of the settlement and compromise of a contingent liability (R. 34, 35).

(b) The Petitioner had been taking medicine prescribed by the doctor, but was not irrational because of same (R. 48), and there is no evidence in the record that the Petitioner was irrational on September 17, 1955, or that if, in fact, he were irrational, the Respondent had knowledge or information concerning same.

(c) The Court's attention is invited to the fact that the meeting in question in the Respondent's General Manager's office was on a Saturday, and that Petitioner Maynard did not work on Saturdays (R. 45), and that the office personnel of the Respondent did not work on Saturdays. Certainly, the meeting in question did not take place on a day when Petitioner Maynard normally received his wages. In addition, Maynard normally received his *wages* in Apex, North Carolina, and did not have to go to Durham to get any wages for labor performed (R. 45), and Petitioner Maynard admitted that it was a different place from where he usually signed for his paycheck (R. 31).

Maynard, as an experienced railroad man, certainly knew that he did not receive wages for labor from the General Manager of the railroad and then be required to have a receipt for same witnessed in front of two other employees (R. 21, 26, 50C).

(d) The Petitioner had been required to sign for every paycheck he had received from the Respondent (R. 21), but he admitted that the release he signed on September 17, 1955, was not "the kind of thing that I would sign for my regular paycheck", (R. 26), and it is suggested that the release is abundantly different from a payroll record which railroad employees are required to sign upon receiving their checks for wages earned. The Petitioner was an experienced railroad employee (R. 25), and was reasonably well educated (R. 25).

(e) Mr. McAllister had not seen the Petitioner between the date the Petitioner was allegedly injured and the date of September 17, 1955 (R. 45). Mr. McAllister prepared the release based on information that Petitioner Maynard entered on the accident report form (R. 47), a copy of which report had reached McAllister some three or four days after Maynard's alleged injury. McAllister dealt with Petitioner Maynard in good faith, based on Maynard's representations, and explained in detail to Maynard the contents of the release (R. 46), and Maynard stated that the sole purpose of his visit to Durham, North Carolina, on a Saturday was to settle up with the Respondent and execute the release (R. 45), and the release, under seal, was properly witnessed (R. 46). McAllister did not know what Maynard's disability was; *he did not make any false representations; he did not make any deceitful suggestions; he did not make any fraudulent*

suggestions, and Maynard did not think he was going to be hurting in the future (R. 31, 45).

The Respondent respectfully submits that the record, when considered in its entirety, does not raise one iota of relevant evidence tending to invalidate the release, and that Petitioner's evidence, when considered as a whole, clearly shows no genuine issue of fact relevant to the validity of the admitted release, and that there was no genuine issue to be submitted to the jury concerning the same.

The only representations found any place in the record concerning the release were made by Petitioner Maynard, and if he misrepresented the facts in his accident report which Mr. McAllister relied upon when preparing the release form on September 17, 1955, the representations or misrepresentations were within the sole knowledge of Petitioner Maynard.

In *Kavadas* v. *St. Louis Southwestern R. Co.*, 263 SW 2d 736 (Mo. 1954), the plaintiff brought an action for alleged injury under the Federal Employers' Liability Act, and the facts indicated that plaintiff had missed one day's pay. When he went to the claim agent to receive the money for the day's pay missed, the plaintiff signed and executed a release, held it long enough to have apparently read it and then signed it. Plaintiff had arrived in the United States from Greece in 1946, signed the release on July 24, 1951. Plaintiff could not read English and could only write his name. Issue of misrepresentation as concerns releases was submitted to the jury. The verdict was for the plaintiff in the sum of $3,700, and the defendant appealed.

On the appeal of the *Kavadas* case, the appellate court held that the trial court should have directed a

verdict for the defendant and reversed the lower court's judgment. The appellate court gave as its reason for reversing the trial court the following:

> "We have carefully searched the transcript and find no evidence to prove this allegation. There is not the slightest intimation in plaintiff's testimony that defendant's agent referred to the release as a receipt."

Kavadas' testimony was to the effect that he went to the "'pay man' (claim agent)" to get his pay for the day he missed and for which he had received no wages. The claim agent prepared a statement of facts and gave the statement to the plaintiff and did not explain anything to the plaintiff. The agent testified that he had asked plaintiff if everything was all right and plaintiff had answered that it was. In addition, when the plaintiff had reported the accident which caused his one day's absence from work on July 8, 1951, it was necessary to get another worker that witnessed the accident to give his version of the accident "because of his better knowledge of English" in order to fill out the accident report. In answering plaintiff's contention of fraud by silence, the Court said that the evidence in the case did not disclose any act or conduct on the part of defendant's agent THAT WAS DESIGNED TO PRODUCE A FALSE IMPRESSION. Noting that false impressions may be created by silence, the Court related the facts of a case where it was properly held that silence created a false impression . . . *Scott* v. *American Mfg. Co.*, 20 SW 2d 592 (Mo. 1929).

In the *Scott* case, the plaintiff, upon being released from the hospital, needed money. He went to his employer's office and received $75.00 and signed some

papers, one of which was a release. However, on several occasions previously when plaintiff had needed money, he had gone to the same office, received an advance against his pay and signed papers so that the advance could be deducted from his pay checks. Of course, the Kavadas case was properly distinguished from the Scott case, as it is distinguishable from the instant case.

The Court, in the *Kavadas* case, continued in its decision as follows:

> "There is some evidence in the record to indicate that plaintiff sustained substantial injuries, and we must, therefore confess that we are reluctant to hold that he is barred from recovery because he signed a release upon the receipt of $12.18. However, this Court cannot relieve the plaintiff of the consequences of his bargain without a valid, legal reason for doing so. Mere inadequacy of consideration alone is not enough. *Vondera* v. *Chapman*, 352 Mo. 1034, 180 SW 2d 704. To hold otherwise would establish a precedent which would make it difficult to settle controversies and would be contrary to the established policy of the law to encourage peaceful settlements . . . "

The Respondent's position in law and fact is further substantiated in the case of *Williams* v. *East St. Louis Junction R. R. Co.*, 349 Ill. App. 296, 110 NE 2d 700 (1953). In this case, the facts were that a personal injury action was brought under the Federal Employers' Liability Act, and the defendant set up a release which the plaintiff had signed under seal, and pleaded the same as a defense to the personal injury action. Upon a verdict by the jury in favor of the plaintiff, the trial Judge set the verdict aside and the plaintiff appealed.

Plaintiff Williams had testified that he was off from work for six days and received a paycheck which did not include pay for the six days during which he was absent from work. Plaintiff Williams thereafter went to see a Mr. Reichert concerning the pay for the six days that he was absent from work. Mr. Reichert did not say anything to the plaintiff except that he should "sign here and get your check", and the check was only for the time lost. Mr. Reichert did not say anything about a settlement or compromise or a release or anything connected therewith. The plaintiff signed the paper without reading same.

In affirming the trial Judge's action in setting the verdict aside and rendering judgment in favor of the defendant, the Court stated as follows:

> "Plaintiff very strenuously insists that the validity and effect of this release should be adjudged under Federal procedure and that under Federal procedure it is required that the question of the validity of a release be submitted to and acted upon by the jury and that the jury's verdict is binding. He relies upon *Dice* v. *Akron, Canton & Youngstown R. R. Co.*, 342 US 359, 72 S. Ct. 312, 96 L. Ed. 398. It is unquestionably true that Federal law controls actions under the Federal Employers' Liability Act in the Federal as well as State courts. The Dice case, supra, however, is authority only for the proposition that where there is competent evidence to support the claim of fraud in securing a release, the question must be submitted to a jury for a determination. It furnishes no authority that the courts may not direct a verdict or grant judgment notwithstanding the verdict where there is no evidence to sustain the allegations of fraud. Furthermore, Federal law is settled that in order to avoid the effect of a release the burden is on the one attacking the settle-

ment to show that the contract is tainted with invalidity either by fraud or mutual mistake of fact. *Callen* v. *Pennsylvania R. Co.*, 332 US 625, 68 S. Ct. 296, 92 L. Ed. 242, 247. Therefore, the burden rested upon the plaintiff to produce evidence to show fraud as alleged in his reply to the affirmative matter in defendant's answer . . .

The evidence of plaintiff fails to disclose that any agent of the defendant made any misrepresentations about the instrument that he was required to sign in order to get his check for wages for the period he did not work, and, in fact, plaintiff stated on cross-examination that the witness Reichert did not represent the instrument as being simply a receipt for wages."

The Respondent respectfully submits that there was no genuine issue of fact relevant to the validity of the admitted release raised by the Petitioner in any manner, and that there was no issue for the jury to determine under the law of *Dice* v. *Akron, Canton & Youngstown R. Co.*, supra, cited by the Petitioner.

In *Callen* v. *Pennsylvania R. Co.*, supra, the Supreme Court stated:

" . . . Until Congress changes the statutory plan, the releases of railroad employees stand on the same basis as the releases of others. One who attacks a settlement must bear the burden of showing that the contract he has made is tainted with invalidity, either by fraud practiced upon him or by a mutual mistake under which both parties acted."

The right to trial by jury in North Carolina is scrupulously protected by the trial courts and the Supreme Court of North Carolina as required by the Constitution of the State of North Carolina. Art. I, Sec. 13, 19,

Art. IV, Sec. 1, 13; Const. U. S. Art. III, Sec. 2; Amendments VI, VII; and it is suggested that it is not a novel question to the Supreme Court of North Carolina as to when the Petitioner has submitted enough evidence to carry his cause to a jury; North Carolina General Statute 1-183.

QUESTION TWO

SHOULD THE SUPREME COURT OF THE UNITED STATES REVIEW A JUDGMENT OF THE SUPREME COURT OF ONE OF THE SEVERAL STATES WHEN THE ONLY ERROR THAT COULD HAVE POSSIBLY OCCURRED IN THE STATE SUPREME COURT IS AN ERROR IN THE STATE SUPREME COURT'S ANALYSIS OF THE EVIDENCE BEFORE IT?

The trial court's decision below was carefully reviewed by the North Carolina Supreme Court which did not overlook the cases cited by the Petitioner in his Brief for this Writ. Both the Petitioner and the Respondent discussed fully these cases in their Briefs and in their oral arguments before the North Carolina Supreme Court. The Supreme Court of North Carolina did not state or intimate that the right to trial by jury guaranteed by the Federal Employers' Liability Act did not extend to a disputed release to the same extent that it does to an issue of negligence, and the Respondent finds nothing in the record to substantiate Petitioner's contentions that the decision of the Supreme Court of North Carolina is in direct conflict with the relevant decisions of the Federal courts, as contended in his Writ of Certiorari. Clearly, if this Honorable Court were to reverse the Court below, it would then be saying, in effect, that every case arising under the Federal Employers' Liability Act must be submitted to the jury and that the trial court and the Supreme Courts of the various states do not have any discretion in determining whether or not there is a

genuine issue of fact to be submitted to the jury. It is respectfully submitted that the Supreme Court of the United States is a court of law rather than a court of correction of errors in fact finding and should not desire to undertake to review the evidence submitted in a trial court in one of the several states in the absence of a very obvious and exceptional showing of error and abuse of discretion; *Goodyear Tire & Rubber Co.* v. *Ray-O-Vac Co.*, 321 US 275 (1944); *District of Columbia* v. *Pace*, 320 US 698 (1944); *Williams Manufacturing Co.* v. *United Shoe Machinery Corp.*, 316 US 364 (1942); *Baker* v. *Schofield*, 243 US 114 (1917); see *Graver Manufacturing Company* v. *Linde Co.*, 336 US 271 (1949).

It is respectfully submitted that the Supreme Court of the United States does not intend to become a "super" Supreme Court to review discretionary decisions rendered by the various State courts, and that the North Carolina Supreme Court should be affirmed under the facts and law before this Court, and, in this connection, the Respondent respectfully calls the Court's attention to *73 Harvard Law Review*, at Page 84 (1959), and, particularly, beginning at No. 8 on Page 96 to No. 10 on Page 99; and also to *Sentilles* v. *Inter-Caribbean Shipping Corp.*, 361 US 107 (1959) (Dissenting Opinion); *Inman* v. *Baltimore & Ohio R. R. Co.*, 361 US 138 (1959).

Remarking briefly on Petitioner's various Points argued in his Brief, the Respondent notes that the Petitioner nowhere in his Brief fairly argues or discusses the questions presented in his Petition for the Writ of Certiorari or the questions set forth in his Brief. Rather, the Petitioner discusses and argues five various Points which appear to be without contro-

versy, under the Federal decisions and the decision of the North Carolina Supreme Court in the instant case. Nowhere in his Brief does the Petitioner show or attempt to show wherein the decision of the Supreme Court of North Carolina in the instant case is directly in conflict with the relevant decisions of the Federal courts and with standards imposed by the Federal law as set forth in his reasons for granting the Writ. Petitioner's Points of argument and Respondent's remarks concerning same are as follows:

PETITIONER'S POINT ONE

FEDERAL, NOT STATE, LAW PREVAILS

As recognized by the Supreme Court of North Carolina, the Respondent concedes that Federal, not State, law prevails in the action before the Court (R. 55). This Point was not in controversy below and it is not in controversy here.

PETITIONER'S POINT TWO

DEFENDANT CONCEDES EVIDENCE SUFFICIENT TO TAKE THE CASE TO THE JURY HAD THE PLAINTIFF NOT SIGNED THE SO-CALLED RELEASE

The Respondent admits the correctness of the above statement, and there was no issue or controversy concerning same in the Court below; however, the Respondent is sure that had the release not existed and had the issues been submitted to the jury only upon the question of negligence and damages, the learned trial Judge would have been required, under law and equity, to set the verdict aside had the issues been answered in favor of the Petitioner. Certainly, such a jury verdict would have been against the preponderance and greater weight of the evidence (R. 33, 36, 41, 42, 43, 44, 45), and would have properly been set aside, in accordance

with this Court's directions as set out in *Rogers* v. *Missouri Pac. R. R. Co.*, 352 US 500, 510, (1957).

> "The decisions of this Court, after the 1939 Amendments, teach that the Congress vested the power of decisions in these actions exclusively in the jury in all but the infrequent cases where fair-minded jurors cannot honestly differ where the fault of the employer played any part in the employee's injury."

PETITIONER'S POINT THREE

ONLY PREPONDERANCE OR GREATER WEIGHT OF EVIDENCE IS REQUIRED TO SET ASIDE RELEASE

The Respondent concedes that the above is the correct statement of the law *and was recognized by the Supreme Court of North Carolina as quoted in Petitioner's Brief herein*, however, for emphasis, the Respondent reiterates that the sole question below and the sole question here, if there be a valid one, is whether or not a genuine issue of fact existed requiring the submission of the evidence concerning the release to the jury. As stated, concerning Petitioner's Points One and Two, Point Three is not in controversy before this Court (R. 55). The law seems to be well settled, and the Supreme Court of North Carolina made no error in connection therewith. *Point Three would be pertinent only in the event there was a jury verdict and has no bearing on whether or not an issue should be submitted to the jury.*

PETITIONER'S POINT FOUR

SO-CALLED RELEASE UNSUPPORTED BY ANY CONSIDERATION AND THEREFORE VOID

The Respondent has heretofore covered the above Point under Question One and submits that there was a valid and sufficient consideration paid unto the Peti-

tioner for, and in consideration of his executing the release (R. 57, 58).

PETITIONER'S POINT FIVE

EXECUTION OF SO-CALLED RELEASE PROCURED BY FRAUD, MISREPRESENTATION, AND UNDUE INFLUENCE ON PART OF DEFENDANT'S AGENTS REQUIRED SUBMISSION TO JURY

The Respondent agrees with the Petitioner that "if there are any genuine issues of fact relevant to the validity of a purported release, such issues are to be determined by the jury, not by the trial Judge", but respectfully submits that in the within action, the Petitioner did not show any fraud or duress on the part of the Respondent or its agents, but, on the contrary, his own testimony negatives his allegations in that respect (R. 58), as recognized by the Supreme Court of North Carolina (R. 58) and by the trial Judge below (R. 54).

CONCLUSION

The Respondent respectfully concludes that:

1. The Petitioner grossly mis-stated the facts of this cause in his Petition for Writ of Certiorari and in his Brief on the merits, as will be evident upon the reading of the evidence before this Honorable Court.

2. Each Point of Law discussed and argued by the Petitioner was correctly interpreted by the Court below, and the decision of the Supreme Court of North Carolina in the instant case is not directly in conflict with the relevant decisions of the Federal courts as set forth in Petitioner's Writ of Certiorari, on Page 4, under the heading, "Reasons for Granting the Writ".

3. The Petitioner has not discussed or argued in his Brief the questions presented in his Petition for Writ

of Certiorari, but argues Points not in controversy and Points wherein the Supreme Court of North Carolina was not in any manner or wise in conflict with Federal decisions, as will be noted in Petitioner's own Brief, wherein he quotes the said Supreme Court of North Carolina as substantiating his contentions as to the law.

4. All of the cases cited by the Petitioner in his Brief, including the Supreme Court of North Carolina, are substantially correct as they pertain to the law; however, the Respondent submits that the Petitioner himself has misinterpreted the facts of the within case and has misapplied the facts of the within case to the cases he has cited, and that the decision of the Supreme Court of North Carolina should be affirmed in all respects. Especially is this true since the Petitioner has not alleged in his Brief and cannot show that the Supreme Court of North Carolina made any error of law and did not recognize the Federal decisions. Regardless of the authorities cited by the North Carolina Supreme Court, it did recognize the correct rules and standards imposed upon it by the Federal courts.

Respectfully submitted, this 22nd day of November, 1960.

CHARLES B. NYE
Durham, North Carolina

CLEM B. HOLDING
Raleigh, North Carolina

Attorneys for Respondent

CERTIFICATE OF SERVICE

I, Charles B. Nye, Counsel for the Respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on this the below-noted date, I have served a true copy of the above foregoing Brief for Respondent, by mailing on this date such true copy in duly and properly addressed envelope, first class postage prepaid, to the Petitioner's attorney as follows:

To: Charles F. Blanchard, Esq.
Attorney at Law
1006 North Carolina National Bank Building
Raleigh, North Carolina

This the 22nd day of November, 1960.

CHARLES B. NYE
Attorney for Respondent
314 Trust Building
Durham, North Carolina